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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

First performance report of the International Tribunal for the Former Yugoslavia for the biennium 2004-2005

Report of the Secretary-General*

Summary

The first performance report of the International Tribunal for the Former Yugoslavia for the biennium 2004-2005 is submitted pursuant to General Assembly resolution 58/255 of 23 December 2003. The report reflects a requirement of additional appropriations of $26.8 million, net of staff assessment, over the initial appropriation for the biennium 2004-2005. The increased requirements include, inter alia, changes with respect to exchange rates as a result of the weakening of the United States dollar vis-à-vis the euro, and provision for the Investigations Division for 2005. The Assembly is requested to approve the revised appropriation for 2004-2005 in the amount of $329,501,900 gross ($298,437,000 net) to the Special Account for the International Tribunal for the Former Yugoslavia.

* The report was delayed because of extensive consultations with the Tribunal.

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I. Introduction

1. The primary purpose of the first performance report is to identify adjustments required owing to variations in the rates of inflation and exchange and in the standards assumed in the calculation of the initial appropriations.

2. It is recalled, however, that when the General Assembly, in its resolution 58/255 of 23 December 2003, approved the initial appropriation for the Tribunal for the biennium 2004-2005 in the amount of $298,226,300 gross ($271,670,600 net), it decided to defer the consideration of the resource requirements for the Investigations Division for 2005 to the fifty-ninth session and requested the Secretary-General to resubmit his proposals in the context of the first performance report for the biennium 2004-2005. At the same time, the Secretary-General was requested to ensure that the proposals of the Investigations Division for 2005 were adequate for the effective implementation of the completion strategy.

3. Accordingly, the present report includes both the technical adjustments of the first performance report as well as the resource requirements of the Investigations Division for the year 2005. It also takes into account a one-time adjustment of $6,747,700, reflecting savings accruing owing to economy measures applied during 2004.

4. The net increase in requirements of $26,766,400 for the Tribunal is shown in tables 1 and 2 below. Table 1 reflects the changes by component and main determining factors and table 2 reflects the changes by object of expenditure and by main determining factors.

5. Explanations of the variations in the costing parameters assumed in the calculation of the initial appropriations are detailed in paragraphs 7 to 10 below. In addition, annex I provides the budgetary assumptions used in the initial appropriations for the biennium 2004-2005 and the rates now proposed in the present report.

Table 1
Summary of projected expenditures and income by component and main determining factors

(Thousands of United States dollars)

Component	*2004-2005 appropriation*[a]	*Projected changes*					*Proposed revised appropriation*
		Exchange rate	*Inflation*	*Standards*	*Other changes*[b]	*Total*	
Chambers	9 368.7	161.5	(7.3)	-	-	154.2	9 522.9
Office of the Prosecutor	75 407.0	6 806.4	(1 474.1)	364.9	15 240.4	20 937.6	96 344.6
Registry	213 450.6	17 642.0	(549.3)	(161.2)	-	16 931.5	230 382.1
Total expenditure (gross)	**298 226.3**	**24 609.9**	**(2 030.7)**	**203.7**	**15 240.4**	**38 023.3**	**336 249.6**
Income							
Staff assessment	26 371.7	866.6	440.4	916.4	2 285.8	4 509.2	30 880.9
Other income	184.0	-	-	-	-	-	184.0
Total net requirements	**271 670.6**	**23 743.3**	**(2 471.1)**	**(712.7)**	**12 954.6**	**33 514.1**	**305 184.7**
Projected savings for 2004							**(6 747.7)**
Total net requirement after savings							**298 437.0**

[a] As approved in resolution 58/255.

[b] Resources for the Investigations Division for 2005.

Table 2
Summary of projected expenditures by object of expenditure and main determining factors
(Thousands of United States dollars)

		Projected changes					
Object of expenditure	*2004-2005 appropriation*[a]	*Exchange rate*	*Inflation*	*Standards*	*Other changes*[b]	*Total*	*Proposed revised appropriation*
Posts	135 922.1	12 959.4	(1 991.1)	(712.7)	11 960.3	22 215.9	158 138.0
Other staff costs	26 008.7	2 325.8	(104.8)	-	-	2 221.0	28 229.7
Salaries and allowances of judges	9 177.3	158.2	(7.1)	-	-	151.1	9 328.4
Consultants and experts	657.3	58.6	(2.6)	-	-	56.0	713.3
Travel	7 713.8	-	0.2	-	994.3	994.5	8 708.3
Contractual services	56 557.0	5 057.0	(222.8)	-	-	4 834.2	61 391.2
General operating expenses	24 617.1	2 201.1	(97.9)	-	-	2 103.2	26 720.3
Hospitality	12.7	1.2	(0.1)	-	-	1.1	13.8
Supplies and materials	2 832.0	253.1	(11.6)	-	-	241.5	3 073.5
Furniture and equipment	7 731.3	691.7	(31.6)	-	-	660.1	8 391.4
Improvement of premises	416.5	37.2	(1.7)	-	-	35.5	452.0
Grants and contributions	208.8	-	-	-	-	-	208.8
Staff assessment	26 371.7	866.6	440.4	916.4	2 285.8	4 509.2	30 880.9
Total (gross)	**298 226.3**	**24 609.9**	**(2 030.7)**	**203.7**	**15 240.4**	**38 023.3**	**336 249.6**
Income							
Staff assessment	26 371.7	866.6	440.4	916.4	2 285.8	4 509.2	30 880.9
Other income	184.0	-	-	-	-	-	184.0
Total (net)	**271 670.6**	**23 743.3**	**(2 471.1)**	**(712.7)**	**12 954.6**	**33 514.1**	**305 184.7**
Projected savings for 2004							(6 747.7)
Total after savings							**298 437.0**

[a] As approved in resolution 58/255.
[b] Resources for the Investigations Division for 2005.

II. Explanation of the changes in net requirements

6. The changes as a result of the main determining factors reflected in tables 1 and 2 would yield an increase of $31,275,600 in expenditure requirements for a total revised appropriation of $329,501,900 (gross). Details are as follows (in thousands of United States dollars):

Appropriation[a]	298 226.3	
A. Variations in budgetary assumptions		
Changes in exchange rates	24 609.9	Based on United Nations operational rates of exchange
Changes in inflation assumptions	(2 030.7)	Based on consumer price indices, post adjustment multipliers promulgated and actual versus budgeted cost-of-living adjustments
Adjustments to standard salary costs and common staff costs	203.7	Based on analysis of actual payroll data, vacancies, common staff costs, recommendations of the International Civil Service Commission and staff assessment provisions consequent upon consolidation of post adjustment
B. Other requirements	15 240.4	Based on projected requirements for the Investigations Division for 2005
Projected savings for 2004	(6 747.7)	
Revised total (gross)	**329 501.9**	

[a] As approved in resolution 58/255.

A. Variations in budgetary assumptions

Changes in exchange rates and inflation assumptions (*increase: $22,579,200*)

7. A net increase in the amount of $22,579,200 would be required to absorb the impact of changes in the exchange rates attributable mainly to the weakening of the dollar vis-à-vis the euro and changes in anticipated inflation. In the present performance report, the realized exchange rates were applied to the period from January to October 2004 and the October 2004 exchange rate was applied to November and December 2004. The resulting figures for 2004 have also been used for 2005. Adjustments resulting from actual experience in 2005 would be implemented in the second performance report. With respect to the revised projected inflation rates applied to all the objects of expenditure in The Hague, these are based on actual post adjustment multipliers for the period from January to October 2004 and projections based on data used by the International Civil Service Commission as well as the latest information available on consumer price indices and actual versus budgeted cost-of-living adjustments.

Adjustments to standard costs (*increase: $203,700*)

8. The increase of $203,700 associated with adjustments to standard costs reflects the net effect of changes in salary standard costs, common staff costs, vacancy rates and staff assessment rates. Revisions to standard salary costs for 2004 are based on the actual averages experienced in the biennium to date, by category and level. Projections for 2005 are based on the trends experienced in 2004.

9. Common staff costs are budgeted as a percentage of net salaries. Expenditures under common staff costs relate to allowances and benefits, appointment, transfer and separation of staff. These relate to the realized ratio of common staff costs to salaries for the biennium 2002-2003.

10. In its resolution 58/255, the General Assembly decided that the average vacancy rate of 10.2 per cent for staff in the Professional and higher categories and 7.3 per cent for staff in the General Service and related categories shall be used as a basis for the calculation of the budget for 2004-2005. While the average vacancy rate for the biennium can only be determined at the end of the biennium, on the basis of experience in the biennium to date, the 2004 realized level of vacancies has been 9.5 per cent for staff in the Professional and higher categories and 7.9 per cent for staff in the General Service and related categories. The adjustments to standard costs to reflect the actual 2004 vacancy factor affects only the budgetary requirements for 2004 and would have no impact on the ability of the Tribunal to recruit in 2005, subject to the lifting of the recruitment freeze owing to the financial situation of the Tribunal. For budgetary calculation purposes for 2005, the initial appropriation vacancy rates of 10.2 per cent for staff in the Professional and higher categories and 7.3 per cent for staff in the General Service and related categories have been retained.

B. Resource requirements of the Investigations Division for 2005

Table 3
Post requirements of the Investigations Division for the biennium 2004-2005

		2005		
Category	*2004*	*January*	*July*	*Net reduction*
Professional and above				
D-1	1	1	1	-
P-5	3	1	1	2
P-4	16	11	11	5
P-3	84	64	58	26
P-2	64	38	32	32
Subtotal	**168**	**115**	**103**	**65**
General Service				
Other level	47	33	33	14
Total	**215**	**148**	**136**	**79**

11. The proposed budget of the Tribunal for the biennium 2004-2005 (A/58/226) included the reorganization of the Investigations Division in 2005 resulting in an overall reduction of 61 posts within the Division. This proposal was based on the completion of all pre-indictment investigations by 31 December 2004 in line with the targets of the completion strategy. The proposal also took into account the requirement of the Office of the Prosecutor to maintain a core investigative capacity to continue to support trials and appeals after 2004 and to support the transfer of rule 11 bis cases and investigation dossiers to local courts. At the same time, in accordance with General Assembly resolution 57/288 of 20 December 2002, the proposed budget included the abolition of 43 posts (34 Professional posts effective 1 July 2005 and 9 General Service posts effective 1 January 2005) within the

Investigations Division and the redeployment of 18 posts from the Division to other priority areas of the Tribunal. In its resolution 58/255, the Assembly approved the redeployment of the 18 posts from the Division to other priority areas of the Tribunal effective January 2005.

12. The Advisory Committee on Administrative and Budgetary Questions, in its report on the budget of the Tribunal for the biennium 2004-2005 (A/58/449), pointed out that the process of determining the number of posts to be abolished, redeployed or retained did not appear to be transparent from either the budget document or the supplementary information provided to the Committee, nor was it supported by a thorough analysis of workload indicators. The Committee requested that the volume of work and the pace of completion of the related activities, especially in the Office of the Prosecutor, be continuously monitored in order to determine whether some of the posts involved could be abolished or released for transfer to other areas of the Tribunal before the second half of 2005. Subject to that request, in order to ensure that the completion strategy is adhered to, the Committee recommended acceptance of the staff capacity proposed for the Office of the Prosecutor.

13. The General Assembly, in its resolution 58/255, approved the proposed staffing table for the Tribunal for the biennium 2004-2005, as recommended by the Advisory Committee, except for the proposed post and non-post resources of the Investigations Division for 2005, for which it decided to defer consideration until its fifty-ninth session. In this regard, the Assembly requested the Secretary-General to resubmit, in the context of the Tribunal's first performance report for the biennium 2004-2005, a proposal for the resource requirements for the Investigations Division for 2005 and to ensure that the proposal was adequate for the effective implementation of the completion strategy. In response to that request, the Tribunal, based on the experience gained during 2004, reassessed its requirements with respect to investigative staff needed in order to provide support to the Office of the Prosecutor in carrying out post-indictment pre-trial, trial and appeal activities as from 1 January 2005.

14. It will be recalled that the overall completion strategy of the Tribunal is comprised of two main pillars: (a) the fair and expeditious completion of trials at the Tribunal in accordance with the time line set for the completion strategy; and (b) the transition from international to domestic prosecution, achieved by transfer to local courts in the region of certain cases under the Tribunal's rule 11 bis against accused persons who have been indicted by the Tribunal. In addition to the transfer of these cases, the Prosecutor will be providing investigation dossiers and other materials to local prosecutors in the region for potential prosecution of individuals investigated but not actually indicted by the Tribunal. With the expected conclusion of all pre-indictment investigations by 31 December 2004, the Investigations Division will undergo a restructuring and a realignment of resources with a view to focus its efforts in support of these two pillars.

15. In order to ensure that the Tribunal will meet the targets of its completion strategy, it is important that the Office of the Prosecutor keep up with the pace and schedule of the Trial Chambers while at the same time be in a position to proceed with the gradual transfer of cases under rule 11 bis to local national courts and dossiers to local prosecutors. Under the proposed new structure, the Investigations Division would be organized around two main components: (a) support for pre-trial,

trial and appeals; and (b) support in respect of the transfer of rule 11 bis cases from the Tribunal to local courts and investigation dossiers from the Prosecutor to local prosecutors, through the establishment of a transition team. The proposed structure also envisages the continuation of a common support services component within the Division encompassing executive management, administrative and field support functions.

16. While all investigations will be brought to the indictment stage by the end of 2004, the Office of the Prosecutor will be required to maintain a core investigative capacity (including investigators, analysts and research staff) to continue to support trials and appeals after 31 December 2004. In order to provide adequate resources for the new structure, the Tribunal has conducted a thorough analysis of the functions and workload to be carried out after 31 December 2004. The Tribunal reached the conclusion that three main investigative related functions would continue to be required after 31 December 2004 to adequately support pre-trial, trial and appeals, namely: investigative, analytical and research-based activities, details of which are provided in annex II. During 2004, the involvement of the Office of the Prosecutor in trial, pre-trial and appellate work has continued unabated owing to the use of ad litem judges and six trials have been ongoing before the Trial Chambers on a daily basis.

17. During the first half of 2004, the Prosecutor was engaged in prosecuting six trials (Milošević; Krajišnik; Brđanin; Strugar; Hadžihasanović and Kubura; and Blagojević and Jokić, involving eight accused). The Office of the Prosecutor is currently awaiting a verdict in two trials (Strugar; and Blagojević and Jokić). In addition, five pleas of guilty were rendered (Deronjić; Babić; Mrđa; Češić; and Jokić). The Office is also involved in 12 post-judgement cases on appeal (Blaskic; Kordic and Cerkez; Kvocka, Prcac, Kos and Zigić; Martinović and Naletelić; Stakić; Simić; Galić; Momir Nikolić; Dragan Nikolić; Jokić; Deronjić; and Brđanin) involving 17 convicted persons plus 5 prosecution appeals. For the remainder of 2004, it is anticipated that a minimum of three additional trials will commence (Limaj et al.; Orić; and Halilović) involving five accused. Pre-trial activity will include 20 cases, 6 new and 14 existing cases involving 29 accused (Ademi and Norac; Ljubicic; Milutinović et al.; Mrksic et al.; Martic; Stankovic; Šešelj; Stanišić and Simatović; Čermak and Markač; Prlić et al.; Mejakić et al.; Kovačević; Rajić; and Rašević).

18. It is estimated that during 2005 there would be 20 cases at the pre-trial stage, 6 cases in trial and 14 cases on appeal on the merits involving 19 defence appeals and 5 prosecution appeals. It will be recalled that for the six trial chambers, there are six prosecution teams in trial at any given time and another six teams engaged with all the pre-trial preparation work that would stand ready to proceed to trial in any of the six trial chambers immediately after a case is completed. Each of the prosecution teams would require investigative, analytical and research support. The amount of work required to support the proceedings varies from case to case, but the cases are generally complex and time-consuming, as many different factors come into play, including such considerations as the time elapsed since the initial indictment was confirmed; how many accused are in custody on the same indictment; the type of case; the size of the case; the number of charges; and the level of responsibility of the accused.

19. In order to determine the total anticipated workload, the Tribunal has undertaken a review of all cases at the pre-trial and trial stage. To facilitate this review, cases were divided according to their level of complexity, namely level one cases (leadership and high-level perpetrators) and level two cases (other serious perpetrators). Factors that are considered in determining the complexity of cases include the number and nature of counts in the indictment; possible amendments of the indictment; the nature of preliminary motions and challenges to the Tribunal's jurisdiction; the number of accused joined in the same case; the number of witnesses and documents involved; the geographical territory covered in the indictment; the previous ranking of the accused within the military or political hierarchy (where appropriate); and the legal issues expected to arise in the course of trial.

20. Owing to their complexity and scope, level one cases generate a higher workload. Based on past experience, on average a level one case would encompass some 300 witnesses whereas a level two case would cover some 150 witnesses. A level one case would also tender approximately 3,000 exhibits, compared with 1,000 exhibits for a level two case. Furthermore, it is estimated that on average a level one case would require the review of some 30,000 documents in order to meet the disclosure obligations under rule 68, whereas a level two case would involve some 10,000 documents.

1. Resource requirements

21. The Investigations Division is headed by the Chief of Investigations (D-1), who is responsible for the overall management and efficient performance of the Division, including the Information and Evidence Section and the Request for Assistance Unit. The Chief is currently assisted in those functions by three deputies (P-5). With the planned reduction in staff and the corresponding reorganization of the Division in 2005, there will no longer be a need for three deputy chiefs. The Division proposes to retain one P-5 position as Deputy to the Chief. It is proposed that the remaining two P-5 posts be redeployed to the Appeals Unit, effective 1 January 2005.

22. Experience has shown that the resources approved for 2004-2005 were not sufficient to support the increased workload of the Appeals Unit both in terms of numbers and complexity of cases. To date, almost every person convicted by the Tribunal has exercised his or her right to appeal and to bring a second level case to the Appeals Chamber. The prosecution has also exercised its right to appeal. In addition, numerous complex appeals are raised during trial to address issues that require resolution before the trial can be completed. It is anticipated that in 2005 the Unit will handle 14 ongoing appeals, compared with 12 in 2004 and 10 in 2003. In the coming years it is anticipated that the volume of work will increase with the completion of large trials with multiple high-ranking accused persons, e.g., Milošević; Milutinović (3 accused); Prlić (6 accused), Limaj (3 accused); Blagojević (2 accused); Hadžihasanović (2 accused); and Mrksic (3 accused).

23. Preparation and argument of appeals require extensive work on complicated legal issues and knowledge of the trial record (on average 20,000 pages of material per case on appeal). As the trials focus on high-level perpetrators and multiple accused cases in its completion strategy, the volume and complexity of appeals will increase. In addition, unlike trials in national courts, in almost every case on appeal new documents or new witnesses have been presented. Over 5,000 pages of new

documents were tendered in cases on appeal in 2003 and it is expected that approximately 3,000 pages of new documents will be presented in 2004.

24. The complexity and sheer volume of such appeals (appeals raised during trial and post-judgement appeals before the court of last resort) and the level of legal advice to be provided to the prosecutor and trial teams, require that the Appeals Unit be staffed by an adequate number of staff at the senior level who have the necessary expertise and experience to handle the work of all the cases at trial that are appealed or reviewed. Currently, at the senior level, the unit has one senior legal counsel (P-5). This is insufficient to cope with the expected increase in the workload and management of the Appeals Unit. In order to allow the Unit to keep pace with the increased number of complex post-judgement appeals anticipated for 2005 onwards, it is recommended that the Unit be strengthened by two additional legal counsel (P-5) posts redeployed from the Investigations Division. With the addition of these new posts, the Appeals Unit would be reorganized into three teams, each headed by a senior legal counsel at the P-5 level.

(a) Support for pre-trial procedures, trials and appeals

Table 4
Breakdown of posts for the trial support component within the Investigations Division

		Pre-trial procedures		*Trials*	*Appeals*	*Total*	
Category	*Jan. 2004*	*Jan. 2005*	*July 2005[a]*	*2005*	*2005*	*Jan. 2005*	*July 2005[a]*
P-4	11	1	1	4	1	6	6
P-3	74	21	15	25	2	48	42
P-2	58	12	8	14	-	26	22
Total	**143**	**34**	**24**	**43**	**3**	**80**	**70**

[a] Abolition of 10 posts (6 P-3 and 4 P-2) effective 1 July 2005 (see para. 26).

25. The Tribunal anticipates that during 2005 there would be six ongoing active trials (two level one and four level two). It is estimated that a level one case would require a complement of four investigators and a level two case would require three investigators. This would result in a proposed staffing of 20 investigators for trial support (13 P-3 and 7 P-2) with overall supervision and coordination provided by 3 team leaders at the P-4 level.

26. For pre-trial investigative support, the Tribunal would require, at the start of 2005, a staffing complement of 20 investigators (13 P-3 and 7 P-2) to support 20 pre-trial cases. The support for pre-trial work can be divided into two major categories. The first category involves work necessary to finalize and update cases immediately prior to entry into trial (trial-ready preparations). It is estimated that 10 investigators would be fully engaged with this task throughout 2005. The second category involves completing the required post-indictment investigative work for those cases for which indictments would only be issued in the last quarter of 2004, currently estimated at six indictments involving 10 accused. It is estimated that the completion of this work would require 10 investigators until 30 June 2005. With the

completion of this task, the pre-trial investigative component would reflect a composition of 10 investigative posts (7 P-3 and 3 P-2) after the abolition of 10 investigative posts (6 P-3 and 4 P-2) effective 1 July 2005. The pre-trial investigative support component would be supervised and coordinated by a team leader at the P-4 level.

27. A reduced investigative capacity would be required to support ongoing appeals during 2005 onwards. The investigative team led by a team leader at the P-4 level would be composed of two investigators at the P-3 level.

28. Based on the above, the Tribunal would require a complement of 42 investigators (28 P-3 and 14 P-2) for direct pre-trial, trial and appeal support activities until June 2005. For the latter half of 2005, the Tribunal's requirement would be reduced to 32 investigators (22 P-3 and 10 P-2). In addition to the aforementioned requirements, there would be five team leaders at the P-4 level (1 P-4 for pre-trial work, 3 P-4 for trial support and 1 P-4 for appellate work).

29. In order to support the pre-trial and trial work, a staffing of 33 analysts and researchers would be required throughout 2005, including 10 military analysts (7 P-3 and 3 P-2), 12 criminal analysts (3 P-3 and 9 P-2), 10 research officers (1 P-4 and 9 P-3) and one demographer (P-3).

(b) Support in respect of transfer of rule 11 bis cases

Table 5
Breakdown of posts for the transition team within the Investigations Division

Category	*Jan. 2004*	*Jan. 2005*	*July 2005*[a]
P-4	-	2	2
P-3	-	8	8
P-2	-	6	5
Total	**-**	**16**	**15**

[a] Abolition of a P-2 post effective 1 July 2005 (see para. 30).

30. To achieve the objectives and tasks associated with the transfer of rule 11 bis cases and referrals of investigation dossiers to local authorities, the Office of the Prosecutor requires a multidisciplinary team (transition team) with a strong analytical and legal component consisting of 16 Professional staff (2 P-4, 8 P-3 and 6 P-2), which would be established in January 2005 through the reassignment of existing posts within the Division of Investigations. In the performance of its work, the team would also draw upon the expertise of trial lawyers in respect of the legal aspects of cases and dossiers. Following completion of the initial work needed to organize and undertake the initial review of cases, the staffing would be reduced by one P-2 post, effective 1 July 2005. The functions of the transition team are contained in annex III.

(c) Common support services

Table 6
Breakdown of posts for the common support services component within the Investigations Division

Category	*January 2004*	*January 2005*	*July 2005*[a]
P-4	5	3	3
P-3	10	8	8
P-2	6	6	5
GS (Other level)	47	33	33
Total	**68**	**50**	**49**

[a] Abolition of a P-2 post effective 1 July 2005 (see para. 34).

31. The units providing common services to the two main components of the new structure of the Investigations Division as reflected in paragraphs 25-30 above include: (a) the field offices; (b) the Tracking and Intelligence Unit; and (c) the Administrative and Linguistic Support Unit.

2. Field offices

32. The 2004 staffing includes resources for six field offices: Sarajevo, Zagreb, Belgrade, Banja Luka, Pristina and Skopje, each headed by a chief of mission at the P-4 level, except at Banja Luka, where the office is headed by an Investigator at the P-3 level. The field offices are responsible for relations and liaison with local authorities in connection with the detention of accused, location of and assistance to witnesses, request for information from other international organizations, administrative, security and logistical support to the Tribunal staff on mission to the field and the unofficial translation and processing of documentation. As from 2005, the field offices will also be called upon to support the Office of the Prosecutor in connection with the transfer of rule 11 bis cases and investigation dossiers to local national courts.

33. With the reduction in investigative missions brought about by completion of all pre-indictment investigations by 31 December 2004, there will no longer be a need to maintain a field office at Pristina. The office at Skopje has up to now served to backstop the Pristina office and other operations in Kosovo. The Skopje office was closed on 30 June 2004 and the Pristina office will be closed by 31 December 2004. With the closure of these two field offices, the requirements for the remaining field offices would be 12 Professional posts (3 P-4, 5 P-3 and 4 P-2) and 11 General Service posts. The closure of the two field offices would result in the abolition of five Professional posts (2 P-4, 1 P-3 and 2 P-2) and six General Service posts.

3. Tracking and Intelligence Unit

34. The Tracking and Intelligence Unit is responsible for tracking the whereabouts of indictees with a view to providing timely intelligence to Governments, organizations and entities with arrest capabilities. The main targets are those still at large, the most obvious and long-outstanding examples being Radovan Karadžić and

Ratko Mladić. The Unit also develops sensitive sources of evidence through the cultivation of insider witnesses and gaining access to sensitive documents. There is a continuing need to secure evidence from people who are or were part of the leadership regimes. This need will continue through the trial process, as it is necessary for the prosecution to react to developments arising from the conduct of the defence. The Unit consists of five Professional posts (three P-3 and two P-2). In anticipation of the arrest and/or surrender of fugitives in the near future, the abolition of one P-2 post, effective 1 July 2005, is proposed.

4. Administrative and Linguistic Support Unit

35. Administrative and linguistic support to the Investigations Division is currently provided by 30 General Service posts: 16 investigation assistants, 11 language assistants, 1 information clerk, 1 cartographic clerk and 1 administrative assistant.

36. For 2005, consistent with the restructuring of the Investigations Division, the number of investigation assistants would be reduced from 16 to 9. These remaining investigation assistants would continue to provide support to the two main components of the Division (trial support and transition team). As concerns the language assistants, it is proposed to abolish one post in 2005, leaving a total of 10 language assistants posts, as the need for language skills in the Office of the Prosecutor is anticipated to continue throughout the biennium and beyond. No change is envisaged for the information clerk, cartographic clerk and administrative assistant. Accordingly, the Unit would have a staffing complement of 22 General Service posts.

5. Summary of total requirements of the Investigations Division in 2005

37. Under the new proposed structure, with effect from 1 January 2005 the Investigations Division would comprise a total of 148 posts, which includes 115 Professional and higher category posts (1 D-1, 1 P-5, 11 P-4, 64 P-3 and 38 P-2) and 33 General Service posts. Effective 1 July 2005, the staffing level of the Division would be reduced by 12 Professional posts (6 P-3 and 6 P-2), resulting in a total of 136 posts within the Division for the second half of 2005. The reduction during 2005 of 79 posts (2 P-5, 5 P-4, 26 P-3, 32 P-2 and 14 General Service) in the Investigations Division represents a decrease of 37 per cent vis-à-vis 2004 staffing levels. The proposed organization chart of the Investigations Division is contained in annex IV.

38. The resources under post and staff assessment in the amount of $11,960,300 and $2,285,800, respectively, would provide for the aforementioned posts within the Investigations Division for 2005 and the redeployment of two Professional (P-5) posts to the Appeals Unit effective January 2005. The costs related to staff assessment would be offset by a corresponding amount under income from staff assessment.

39. As concerns investigative travel, the proposed budget for the biennium 2004-2005 included requirements of $4,938,900 ($3,988,300 for the Investigations Division, $553,800 for the Prosecution Division and $396,800 for the immediate office of the Prosecutor). The proposals reflected a decrease of $1,588,100 compared with the 2002-2003 base appropriation owing mainly to a reduction in the requirements for investigative travel during the biennium. As a result of the decision

of the General Assembly to defer the consideration of the resource requirements for the Investigations Division, the amount of $1,984,500 for 2005 was not appropriated.

40. As explained in the preceding paragraphs, there would be a continuing need for investigative staff to support pre-trial, trial and appeal work during 2005. This would include locating and interviewing witnesses, testimony taken under rule 92 bis, proofing witnesses, rebuttal of defence witness testimony, serving summonses on witnesses, search and seizure of material under search warrant. It is estimated that 165 missions would be undertaken during 2005. Furthermore, the members of the Transition Team would also be required to travel to the field during 2005 to contact witnesses and to provide liaison with local authorities, for which an estimated 93 missions would be undertaken. Accordingly, the total requirements under official travel for the Investigations Division for 2005 would amount to $994,300.

III. Conclusions and recommendations

41. **On 24 June 2004, both the President of the General Assembly and the President of the Security Council were apprised of the serious financial situation facing the Tribunal owing to failure of Member States to pay their assessed contributions in full and on time (A/58/847-S/2004/512). They were also informed that as of May 2004, steps had been taken to freeze recruitment and scale down operations. In addition, the Tribunal has since been receiving authorization to spend allotments on a monthly basis. As a consequence of the aforementioned, projected expenditures for 2004 reflect a difference of $6,747,700 compared with the appropriation for 2004. The projected 2004 savings are mainly owing to the decision to defer the acquisition of goods and services, the curtailment of non-court related travel and other economy measures. The General Assembly may wish to utilize this savings in approving the revised appropriation for the Tribunal for the biennium 2004-2005.**

42. **Accordingly, the General Assembly may wish:**

(a) **To take note of the present report;**

(b) **To approve the staffing for the Investigations Division contained in table 3 and the redeployment of two posts to the Appeals Unit for 2005;**

(c) **To approve the resource requirement for investigative travel for 2005 in the amount of $994,300;**

(d) **To offset, in part, the additional requirement in (b) and (c) above by the projected 2004 savings in the amount of $6,747,700;**

(e) **To revise the initial appropriation for the biennium 2004-2005 in the amount of $329,501,900 gross ($298,437,000 net) to the Special Account for the International Tribunal for the Former Yugoslavia.**

Table 7
Financing of the International Tribunal for the Former Yugoslavia for the biennium 2004-2005
(United States dollars)

	Gross	*Net*
1. Initial appropriation 2004-2005	298 226 300	271 670 600
2. Proposed changes for the biennium 2004-2005		
(a) Changes to budgetary assumptions	22 782 900	20 559 500
(b) Requirements for the Investigations Division for 2005	15 240 400	12 954 600
(c) Projected savings for 2004	(6 747 700)	(6 747 700)
Total (a+b+c)	**31 275 600**	**26 766 400**
3. Proposed revised appropriation for 2004-2005 (1+2)	329 501 900	298 437 000

Annex I

Budgetary assumptions for the International Tribunal for the Former Yugoslavia for the biennium 2004-2005

	Initial appropriation		*Proposed estimates*	
Budget parameters	*2004*	*2005*	*2004*	*2005*
Rate of exchange (US$ 1:€)	0.89	0.89	0.82	0.82
Inflation rate (percentage)	1.9	1.9	1.4	1.5
Post adjustment multiplier (percentage)	38.7	38.7	44.3	45.0
Common staff costs rate (percentage)	42.5	42.5	40.2	40.2
Vacancy rates for continuing posts				
Professional category and above (percentage)	10.2	10.2	9.5	10.2
General Service and related categories (percentage)	7.3	7.3	7.9	7.3
Vacancy rates for new posts				
Professional category and above (percentage)	50	50	50	50
General Service and related categories (percentage)	40	40	40	40

Annex II

Description of investigative related functions

1. Three main investigative related functions will continue to be required after 31 December 2004 to adequately support pre-trial, trial and appeals, namely: investigative, analytical and research based activities.

Investigative support functions

2. Investigative support is essential throughout the entire prosecution process. New and important lines of enquiry may arise at any time. Following the confirmation of an indictment, investigators continue to review, refine and document evidence to ensure admissibility during the trial. Investigators are also the main contact within the Prosecution Division to locate and prepare witnesses for their testimony in The Hague. Investigators ensure that the relevant searches are conducted on all intended prosecution witnesses in order to confirm statements made by witnesses and to meet the prosecution disclosure obligations. Furthermore, investigators are responsible, in coordination with other relevant offices, for evaluating requests for protective measures for witnesses, logistical support and relations with the host Government.

3. During the trial phase, investigative support continues to be crucial for the success of the prosecution case. The investigators are required to assist in the process of evaluating all the new information and evidence provided by the defence as well as material provided by different Governments during the pre-trial and trial phases. There is always a need for further investigations during the trial phase. New information is often provided by the witnesses during the proofing sessions, which requires additional investigation and may need to be corroborated. This requires investigators to locate additional witnesses and evidence. During the course of the defence case, evidence is introduced that has to be checked for accuracy and veracity. In this context, investigators search for documents and witnesses in order to enable effective cross-examination and to prepare solid prosecution "rebuttal" arguments. Furthermore, investigators are regularly required to appear in court as witnesses to the proceedings. Prosecution legal staff cannot perform this function. It should be noted that the type of support required from investigators of the Office of the Prosecutor during the proceedings is readily available to prosecutors in national jurisdictions who can rely on the dedicated and ongoing assistance of the relevant police forces throughout trial proceedings.

4. During the appeals phase, in which it is also possible for additional evidence to be presented, investigators undertake additional investigations as required. They may be called upon to undertake searches of internal holdings, review new documents or information from recently identified witnesses or from evidence provided by the defence team.

Analytical support functions (military and criminal)

5. Most of the crimes under the jurisdiction of the Tribunal were committed within the context of the military conflict in the former Yugoslavia and hence it is essential to undertake specialized analysis of the military aspects of the conflict. Such analysis is provided by the military analyst team in support of both the investigative and prosecutorial aspects of the Office of the Prosecutor. The military

analysts provide analytical reports on organized military and police groups, as well as paramilitary groups, for all areas of the former Yugoslavia. The criminal analysts provide similar services as their military counterparts; however, their focus is on those broader areas of responsibility not specifically linked to military aspects of the case.

Research support functions

6. Researchers are responsible for the identification of the civilian, police and military leadership structures of the parties involved in the conflicts in the former Yugoslavia. Their primary function is to identify individuals holding positions of control and authority and to identify their de jure and de facto roles, and the relationships between them and between the civilian, police and military structures. The team members gather and research all available evidence and material. They also develop factual arguments for trial teams regarding the armed conflict in areas of the former Yugoslavia, which is an important element in the majority of Office of the Prosecutor indictments and trials. The results of this research are regularly incorporated into the trial proceedings and related prosecution briefs throughout the trial process. Furthermore, because of their specialized high-level expertise, members of the research team are regularly called as expert witnesses during trials.

Annex III

Functions of the transition team

1. In support of the second pillar of the completion strategy, the proposed budget for the biennium 2004-2005 included the establishment of a transition team through reassignment of posts within the Investigations Division to oversee: (a) the preparation of the transfer of rule 11 bis cases from the Tribunal to the State court in Bosnia and Herzegovina or other courts in support of the completion strategy; and (b) the preparation of investigation dossiers for all other lower-level war crime perpetrators identified during investigations, with a view to referring those cases to the appropriate prosecuting authorities in the countries of the former Yugoslavia.

2. The transfer or referral of cases to the local authorities in the former Yugoslavia and other States needs to be considered in three parts.

(a) It is expected that some cases involving currently indicted accused who are not the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal may be referred to national jurisdictions for trial pursuant to rule 11 bis of the Tribunal's Rules of Procedure and Evidence. As many accused were either arrested in Bosnia and Herzegovina or allegedly committed crimes there, it is expected that most of these cases will be referred to the War Crimes Chamber in Sarajevo, which is being established under the auspices of the Office of the High Representative for Bosnia and Herzegovina in cooperation with the Tribunal. It is estimated that the Chamber will be operational in early 2005 and that rule 11 bis referrals might begin around that time. The Prosecutor anticipates that 12 cases involving 22 individuals may be referred to national jurisdictions.

(b) There are cases involving medium-level perpetrators that will not result in indictments being issued by the Tribunal. In this category, 19 investigations, involving approximately 67 suspects, have been completed. It is the Prosecutor's intention to refer the responsibility for the further investigation and ultimate prosecution of all of these cases to the local authorities in the former Yugoslavia. It is expected that of these 19 cases, 14 (involving 50 suspects) would be referred to the Prosecutor of the State Court of Bosnia and Herzegovina; 3 cases (involving 10 suspects) would be referred to the local authorities of Croatia; 1 case (involving 6 suspects) would be referred to the local authorities of Serbia and Montenegro; and 1 consolidated case would be referred to prosecutors in the former Yugoslav Republic of Macedonia.

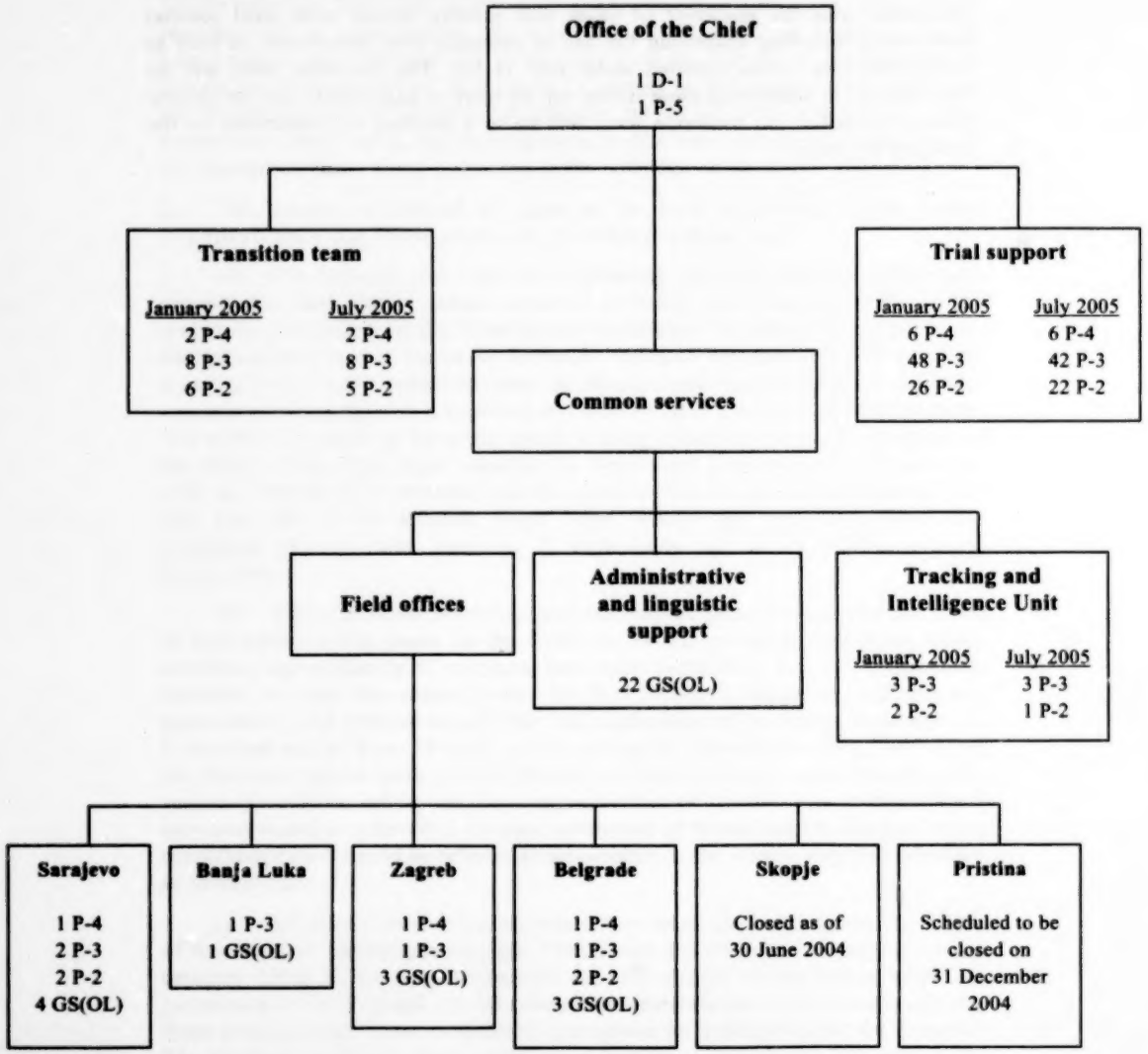
(c) All of the low-level perpetrators have been identified during the course of the Tribunal's investigations since 1994. There are thousands of suspects in this category. Many of them are responsible for very serious crimes falling within the jurisdiction of the Tribunal, but because of the relatively low level of responsibility, these suspects were never considered appropriate for prosecution by the Tribunal. The evidence relating to these perpetrators will be compiled and delivered to the local authorities for further investigation and prosecution in the domestic courts of the former Yugoslavia, including Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and probably the former Yugoslav Republic of Macedonia.

3. The transition team will play a substantial role in supporting the three types of cases outlined above. During 2005, the team will concentrate on category (a) cases

involving the transfer of cases under rule 11 bis. The team will then deal with category (b) cases. This work will mainly entail contacting witnesses to seek their agreement to hand over their statements, reviewing all the evidence of the case, deciding on formats for transferring evidence, requesting permission for release of information under rule 70 (matters not subject to disclosure). Other responsibilities associated with the handover of cases will involve liaison with local judicial authorities, including discussing the use of evidence with prosecutors as well as monitoring local cases remitted under rule 11 bis. The transition team will be instrumental in addressing these issues and its work is expected to last for several years. Thereafter, the transition team will be in a position to concentrate on the category (c) cases.

Annex IV

Proposed organization chart of the Investigations Division for 2005



Abbreviations
GS(OL) — General Service (Other level)

Annex V

Progress report on the legal aid system

1. In its resolution 58/255 the General Assembly encouraged the Tribunal to continue to implement and closely monitor reforms to its legal aid system, and requested the Secretary-General to report thereon, in particular on consequent savings in defence costs, in his first performance report for the biennium 2004-2005. The Assembly also requested the Secretary-General to include, where appropriate, the International Tribunal for the Former Yugoslavia in the scope of his consideration and recommendations referred to in paragraphs 38 and 39 of his comprehensive report on the progress made by the International Criminal Tribunal for Rwanda in reforming its legal aid system (A/58/366).

2. The Tribunal's legal aid system has been modified several times since its inception. The first major reform took place in 2001 when the Registry decided to introduce a ceiling payment regime for all stages of the proceedings, which is still applicable for the pre-trial and appeal stages. This was a step towards the implementation in 2003 of a "lump sum" payment system for the trial phase, which combines predetermined cost ceilings with easier administrative procedures for invoicing. The Registry is currently developing a similar system for the pre-trial stage.

3. In 2001, the concept of "partial indigence" was introduced, allowing the Tribunal to cover just a portion of the costs incurred by the representation of an accused who was capable of paying some, but not all, of the cost of defence. A financial formula to determine the contribution of the accused was developed by the Registry and, in line with several decisions of the Chambers, the formula was revised in 2004.

4. The Registry's investigator continues to make inquiries for the purpose of establishing whether an accused satisfies the requisite conditions for assignment of counsel. In addition to collecting information in relation to the means of the accused, the investigator continues to inquire into potential fraudulent activities of defence counsel, including the practice of fee-splitting.

5. In response to General Assembly resolution 58/255, the Tribunal is currently considering, in coordination with the Rwanda Tribunal, a proposal to conduct audits of defence teams' costs by an independent team of experts.

6. The demands on the legal aid system are substantial, and commensurate with the high level of judicial activity of the Tribunal and the large number of accused in detention or on provisional release. During 2003, the Chambers overturned a number of decisions on partial indigence and addressed numerous concerns raised by defence team members on the allocation of fees by the Registry. These decisions have forced the Registry to adapt its policies and on certain occasions allot extra resources to defence teams. Nevertheless, overall, the developments in the administration of legal aid have resulted in a more streamlined, rationalized system that minimizes potential for waste or abuse while at the same time ensuring that the accused is given quality representation.

7. Since the introduction of the revised lump sum trial system in 2003, a number of new factors have kept defence costs relatively high: (a) the arrest or voluntary surrender of high profile accused, which has resulted in an increase in the

proportion of highly complex and difficult cases; and (b) the unanticipated level of disclosures during trials and resort by parties to rule 115 of the Rules of Procedure and Evidence (the so-called additional evidence rule) which has resulted in additional workload for defence teams. At the same time, the number of detainees receiving legal aid during 2004 is projected to be higher than during the previous biennium. Furthermore, the average exchange rate of the United States dollar against the euro for the first half of 2004 has been approximately 8 per cent higher than the budgeted rate for the biennium 2004-2005. Under the previous payment system, the above factors would have undoubtedly generated additional costs. However, owing to the efficiencies of the new payment system, the Tribunal has been able to keep such increases under control.

A. Indigence

8. Under article 21 of the Statute, accused are only entitled to legal aid if they are unable to pay for their defence.

9. In an effort to deal more realistically with the indigence of the accused, in December 2000 the Tribunal approved an amendment to the directive that allows the Registry to pay only a portion of the costs incurred by the representation of an accused when the accused possesses the means to remunerate counsel in part. The assessment of indigence or partial indigence is determined based on a financial formula specifically developed by the Registry for this purpose.

10. Between June 2002 and June 2004, 11 accused were found to be partially indigent. However, the decisions of the Registry on partial indigence have been challenged on several occasions before the Chambers. Since January 2003, the Chambers has overturned four decisions of the Registry on partial indigence. In particular, the Chambers were concerned that the families of the accused would be forced to dispose of their principal family home to pay for defence costs. In February 2004, the Registry was instructed to review its system and to examine the marital property regime in the region as it applied to the assets of the accused and spouse.

11. In May 2004, the Registry reformulated its policy with a view to ensuring that the families of accused could meet their living expenses while the accused remained in custody. The new policy is based on both common and civil law legal aid systems and excludes from the contribution of the accused, the families' "necessities of life" in order to maintain a reasonable standard of living. In application, the new policy will require an accused with insignificant means to contribute less to the costs of his defence than under the previous formula, while a wealthier accused will contribute more.

12. The application of the partial indigence formula, even before its recent revision, has resulted in significant savings under defence counsel fees. Since December 2002, the Registry's decisions on partial indigence, once fully implemented, will result in savings of approximately $1.5 million. The Registry is hopeful that future decisions on partial indigence will be upheld by the Chambers. While the partial indigence formula saves costs, the system has its drawbacks: accused who are found partially indigent often refuse to pay their counsel. This results in counsel having to represent their client at a reduced rate and may lead to a disruption of the proceedings, including but not limited to counsel seeking to

withdraw from the case or refusing to take the case in the first place. Unless this problem can be meaningfully addressed, it is reasonable to expect that it may lead to delays in the proceedings and, by extension, compromise the targets of the completion strategy.

B. Defence counsel fees

Pre-trial and appeal

13. In 2001, the Tribunal introduced a revised payment ceiling system for pre-trial and appeals when it became evident that the previous system, which had no payment ceiling attached to the stage of the proceedings, needed to be improved. The revised system employed several methods for rationalizing and simplifying the system, in particular, imposing a maximum total remuneration for a case stage depending on the complexity of the case.

14. A number of problems have been encountered in the application of the ceiling payment system. The pre-trial phase can run longer than scheduled and some defence teams exhaust their full allotment early in the initial stage of the pre-trial proceedings through heavy billing. In an effort to maintain the integrity of the system of payment ceilings, and particularly to avoid rewarding those defence counsel who might have mismanaged resources in the early part of the proceedings, the Registry has generally refused to grant additional allotments. The defence teams have persistently challenged these decisions: since August 2003, 28 challenges have been made. As counsel have gone unpaid in the interim, there have also been allegations that the Registry's decisions have been damaging to the right of the accused to a fair trial. Additionally, in some cases, strategy changes initiated by the prosecution have had an impact on the workload and strategy of the defence rendering the ceilings unjust and necessitating the Registry to grant exceptions. The above situations have generated a significant additional workload for the Registry and at times the Chambers, as the Registry's decisions have had to be reassessed, explained, defended and even litigated before the Chambers.

15. Having recognized the benefits of the lump sum system for trial described in paragraphs 17 to 21 below, in early 2004 the Registry entered into discussions with the Association for Defence Counsel (ADC) with a view to considering the possibility of extending the lump sum approach to the pre-trial stage. The lump sum system under consideration is expected to bring better control and projection of costs associated with defence fees while promising to streamline the billing process for both the defence and the Registry. The Registry is expected to introduce its new pre-trial system, in consultation with ADC, by the end of 2004.

16. The ceiling system for the appeals stage is working reasonably well. Accordingly, the Registry considers that there is little benefit for the Tribunal to modify the system at the present juncture.

Trial

17. In July 2002, the Tribunal endorsed the development and implementation of a true "lump sum" system for future trials and the Registry introduced a system for all trials starting in 2003 and thereafter.

18. Since payments are predetermined before the beginning of the trial, the total costs involved under the lump sum system are predictable and not easily subject to adjustment. Under normal circumstances, if a trial stage terminates ahead of schedule, the defence will still be entitled to the full lump sum; conversely, if the trial runs a little longer, the defence will not receive additional payments. The lump sum system, therefore, provides a strong incentive to defence counsel to work efficiently and not to prolong trials.

19. Since August 2004, the lump sum payment system has been applied to four trials before the Tribunal: *The Prosecutor v. Blagojević and Jokić*, *The Prosecutor v. Hadžihazanović and Kubura*, *The Prosecutor v. Strugar* and *The Prosecutor v. Krajišnik*. Based on the experience of the Registry to date, the system has shown greater efficiency, as it decreases the workload with respect to reviewing invoices and allows the Registry's judicial services to devote attention to more pressing matters. The defence teams are not required to submit more than a pro forma invoice on a monthly basis, and because any incentive for counsel to overstate the work performed has been eliminated, invoices need not be subject to critical review or potentially time-consuming dialogue between defence and Registry. It is also worth noting that all of the above cases are proceeding on schedule or better; the first phase of the Blagojević case concluded a few weeks early.

20. Since its inception, the system has required some adjustment. The Registry, after discussions with ADC, agreed to increase the prescribed fees to incorporate interpretation and translation costs. The Registry has also communicated with ADC to clarify the rationale behind the policy to withhold final disbursements as well as the type and extent of information required from defence counsel before the final disbursement is released. Along with the introduction of the pre-trial lump sum payment system, a further amendment to the payment system in trial will be effected, which aims to synchronize the calculation of the lump sum with the future pre-trial payment system and to separate the interpretation and translation costs from the lump sum. This amendment reflects the outcome of discussions with ADC.

21. As of the date of this report, the Registry's assessment is that the lump sum system is working well. The system appears to be cost-effective, allows expenditures to be controlled and affords defence counsel more flexibility and independence in the use of the resources made available to them.

C. Financial investigations

22. One of the most important actions taken to secure the integrity of the legal aid system was the appointment of a financial investigator in March 2002. The investigator assists the Registry in ensuring that only the indigent are provided with counsel and that issues of professional conduct are addressed. The investigator has also addressed the issue of "fee splitting" in which counsel and the accused arrange to share lawyer fees as well as other financial improprieties, such as over-billing and tactics to delay the procedures which results in increased fees. The deterrent effect of the investigator's work is certain to discourage other abuses by defence counsel.

23. For the future, the Registry expects ADC to take a more active role in monitoring the conduct of its members.

D. Inter-Tribunal cooperation

24. In its resolution 58/255, the General Assembly requested the Secretary-General to include, where appropriate, the International Tribunal for the Former Yugoslavia in the scope of his consideration and recommendations referred to in paragraphs 38 and 39 of his comprehensive report on the progress made by the International Criminal Tribunal for Rwanda in reforming its legal aid system (A/58/366).

25. In response to this request, the Tribunal is currently considering, in coordination with the Rwanda Tribunal, a proposal to conduct audits of defence teams by an independent team of experts (based away from The Hague and Arusha) to assess defence teams' costs.

26. In April 2004, representatives of both Tribunals agreed that the group of independent experts should be composed of one legal aid expert and two jurists from both the common and civil law systems. It is anticipated that each year they will audit one completed case or a very limited number of such cases from each Tribunal, to determine whether the hours invoiced were reasonable and whether the work performed was necessary.

27. More generally, a number of exchanges have taken place between the legal aid offices of the two Tribunals as well as the Special Court for Sierra Leone, with a view to enhancing coordination and cooperation of the legal aid systems. More missions are scheduled for the remainder of 2004 during which further discussions will take place regarding, inter alia, the establishment of the independent team of experts and improved payment policies.

E. Projected expenditures

28. Based on the current pattern of expenditure, the Tribunal estimates expenditures of approximately $14.5 million for 2004 (or $29 million for the biennium 2004-2005), compared with final expenditures of approximately $25 million for the biennium 2002-2003, which is mainly attributable to the weakening of the dollar vis-à-vis the euro. At the same time it is anticipated that during the biennium 2004-2005, the Tribunal will provide legal aid assistance to an average number of 58 detainees as opposed to an average of 55 detainees during 2002-2003. When the above factors are taken into account, the projections for 2004-2005 represent a reduction in real terms/per capita vis-à-vis 2002-2003 expenditures.

29. Furthermore, as explained in the comprehensive report on the progress made by the Tribunal in reforming its legal aid system (A/58/288), since the introduction of the revised lump sum trial system in 2003, a number of new factors have kept defence costs relatively high: (a) the arrest or voluntary surrender of high-profile accused, which has resulted in an increase in the proportion of highly complex and difficult cases, and (b) the unanticipated level of disclosures during trials and resort by parties to rule 115 of the Rules of Procedure and Evidence (the so-called additional evidence rule) which has resulted in high amounts of additional work on the part of the defence teams.

30. Under the previous payment system, the factors described in paragraphs 28 and 29 above would have undoubtedly generated additional costs. However, because

of the efficiencies of the new payment system, the Tribunal has been able to keep such increases under control.

31. Another advantage of the new lump sum system is that the duration of trials is expected to be reduced, as defence lawyers no longer have an incentive to prolong cases. While this has a positive effect on the completion strategy, it does not translate per se in savings during the biennium since as one trial ends another case at the pre-trial stage would move to trial. However, it could be argued that over the life span of the Tribunal savings would accrue as the overall expenditures for defence counsel fees would be lower than those that would otherwise have been incurred under the previous payment system.

F. Conclusion

32. The Registry, in fulfilling its responsibility to administer a legal aid system, risks its decisions being overturned by the Chambers and the judges on various points of policy and administration. This has happened in those cases where the Chambers have felt that the policies have become too strict and risk infringement of certain rights of accused persons, who are presumed innocent until proven guilty.

33. Administering the legal aid system involves striking a sensitive balance between the conflicting objectives of maintaining the equality of arms between prosecution and defence, assuring the accused a competent defence and a fair trial, and on the other hand managing a system with well-defined budgetary restrictions. The legal aid system has gone a long way towards addressing the attendant difficulties and striking that balance in the most optimal way. Efforts at reform continue, with anticipated rationalization of costs, and more effective stewardship of the legal aid resources, while safeguarding the principles of justice the legal aid system must serve.